IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15480 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHBHAI PUJABHAI

Versus

DY.LABOUR COMMISSIONER

Appearance:

1. Special Civil Application No. 15480 of 2004

MR AR THACKER for Petitioner No. 1

MR SP HASURKAR, AGP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1

MR GANDHI for NANAVATI ASSOCIATES for Respondent No. 2

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 27/04/2005

ORAL JUDGEMENT

1. RULE. Mr.Hasurkar, learned AGP, waives service for notice of rule on behalf of respondent No.1 and Mr.Gandhi, learned counsel waives service of notice of rule on behalf of the respondent. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner challenges the order dated 23rd August, 2004, passed by respondent No.1 refusing to make a reference to the appropriate Labour Court under the Industrial Disputes Act, the dispute sought to be raised by the petitioner. It is the case of the petitioner that he was engaged as a casual labour by the respondent No.2-company since March, 1990. His services came to be abruptly terminated in December, 1999, which termination according to the petitioner was without following due process of law. The petitioner sought to raise an industrial dispute by making an application to the Assistant Labour Commissioner in April, 2004. The petitioner also filed an application seeking condonation of delay in raising the dispute. Such an application dated 10-5-2004 has also been produced by the petitioner on record.

2.1 Respondent No.1, however, by his impugned order dated 23rd August, 2004, rejected the request for making a reference on the ground that there has been delay in excess of three years, which is not being condoned. The petitioner has, therefore, preferred the present petition challenging the said order dated 23rd August, 2004.

2.2 The respondent No.2 has resisted the petition and filed affidavit-in-reply.

3. From the above narration, it can be seen that the request of the petitioner for referring the dispute for adjudication to the appropriate Court under the Industrial Disputes Act came to be turned down by the respondent No.1 only on the ground of delay. The petitioner had filed an application of condonation of delay in which it was stated, inter alia, that on account of sudden termination, he had lost his source of income, which had put him in great difficulties. He has also suffered mental shock. He did not have sufficient means to engage an advocate and seek advise for raising the dispute. He, therefore, requested that the delay be ignored and his request for making a reference be accepted so that on a technical ground his case, which is otherwise sound, may not suffer and he may not be deprived of justice.

4. It is by now well settled that the appropriate Government considering the question of making a reference under the Industrial Disputes Act has limited jurisdiction to refuse to refer an industrial dispute. It is not open for the Government to dwell into the merits and demerits of the claim and to decide the lis between the parties (See AIR 1985 SC 860). In the said decision, the Hon'ble Supreme Court made following observations.

> "There may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render S.10 and 12 (S) of the Industrial Disputes Act nugatory."

5. In the present case, I find that the petitioner has stated detailed reasons for ignoring the delay, which otherwise also normally ought not to have been considered as fatal for the purpose of raising the dispute. The effect of seeking the dispute belatedly ought to have been left open for the appropriate Court under the Industrial Disputes Act to adjudicate upon. I find that the respondent No.1 in the facts of the present case, erred in refusing to make a reference only on the ground of delay.

6. In the result, impugned order dated 23rd August, 2004, is quashed and set aside. Respondent No.1 is directed to reconsider the question of making a reference in light of the observations made hereinabove. Such a decision shall be taken within a period of two months from the date receipt of copy of this order.

7. With these directions, the petition is disposed of. Rule is made absolute to the above extent. No order as to costs.

(AKIL KURESHI, J.)
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